

§ 981.408 Inedible kernel.

Pursuant to § 981.8, the definition of inedible kernel is modified to mean a kernel, piece, or particle of almond kernel with any defect scored as serious damage, or damage due to mold, gum, shrivel, or brown spot, as defined in the United States Standards for Shelled Almonds, or which has embedded dirt or other foreign material not easily removed by washing: *Provided*, That the presence of web or frass shall not be considered serious damage for the purposes of determining inedible kernels, pieces, or particles of almond kernels.

[59 FR 39419, Aug. 3, 1994]

§ 981.413 Roadside stand exemption.

The term *at retail at a roadside stand* as used in § 981.13 shall be defined to mean sales for home use and not for resale which are not in excess of 100 pounds net kernel weight to any one customer per day. Sales of almonds at certified farmers' markets in compliance with section 1392 of the regulations of the California Department of Food and Agriculture shall be construed as "roadside" sales for the purpose of § 981.13 where these conditions are met.

[50 FR 30264, July 25, 1985]

§ 981.441 Credit for market promotion activities, including paid advertising.

(a) In order for a handler to receive credit for his/her own promotional activities from his/her pro rata portion of advertising assessment payments, pursuant to § 981.41(c), the Board must determine that such expenditures meet the applicable requirements of this section. Credit will be granted either in the form of a payment from the Board, or as an offset to that portion of the assessment if activities are conducted and documented to the satisfaction of the Board at least 2 weeks prior to the Board's first and second assessment billings, and at least 3 weeks prior to the Board's third and fourth assessment billings in a crop year: *Provided*, That promotional activities conducted during the 1998-99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth as-

essment billing in order to receive credit in the form of a payment from the Board, or as an offset to that portion of the assessment. Credit, hereinafter termed "Credit-Back", will be granted in an amount not to exceed 66⅔ percent of a handler's proven expenditures for qualified activities.

(b) The portion of the handler assessment for which credit may be received under this section will be billed, and is due and payable, at the same time as the portion of the handler assessment used for the Board's administrative expenses, unless the handler(s) conduct and document activities at least 2 weeks prior to the first and second assessment billings and 3 weeks prior to the third and fourth assessment billings: *Provided*, That promotional activities conducted during the 1998-99 crop year must be conducted and documented at least 2 weeks prior to the Board's fourth assessment billing in order to receive credit. If the handler(s) conduct activities and submit documentation according to applicable provisions in this section, their advertising assessment obligation will be reduced according to the amount of proven activities approved by the Board.

(c) The Board shall grant Credit-Back for qualifying activities only to the handler who performed such activities and who filed a claim for Credit-Back in accordance with this section.

(d) Credit-Back shall be granted only for qualified promotional activities which are conducted and completed during the crop year for which Credit-Back is requested.

(e) The following requirements shall apply to Credit-Back for all promotional activities:

(1) Credit-Back granted by the Board shall be that which is appropriate when compared to accepted professional practices and rates for the type of activity conducted. In the case of claims for Credit-Back activities not covered by specific and established criteria, the Board shall grant the claim if it is consistent with practices and rates for similar activities. To this end, the Board may issue guidelines for qualifying activities from time to time as warranted. For activities in markets

other than the United States and Canada, paragraph (e)(5) of this section shall also apply.

(2) The clear and evident purpose of each activity shall be to promote the sale, consumption or use of California almonds, and nothing therein shall detract from this purpose.

(3) No Credit-Back will be given for advertising placed in publications that target the farming or grower trade. No Credit-Back shall be given for any outdoor advertising in California almond growing counties with more than 1,000 bearing acres: *Provided*, That outdoor advertising in these counties which specifically directs consumers to a handler-operated outlet offering direct purchase of almonds will be eligible for Credit-Back.

(4) Credit-Back shall be granted for those qualified activities specified below, except that Credit-Back will not be allowed in any case for travel expenses, or for any promotional activities that result in price discounting.

(i) *Paid advertising directed to end-users, trade or industrial users.* Credit-Back shall be granted for money spent on paid advertising space or time including, but not limited to, newspapers, magazines, radio, television, transit and outdoor media, and including the standard agency commission costs not to exceed 15 percent of gross.

(ii) *Other market promotion activities.* Credit-Back shall be granted for market promotion other than paid advertising, for the following activities:

(A) Marketing research (except pre-testing and test-marketing of paid advertising);

(B) Trade and consumer product publicity: *Provided*, That no Credit-Back shall be given for related fees charged by an advertising or public relations agency;

(C) Printing costs for promotional material;

(D) Direct mail printing and distribution;

(E) Retail in-store demonstrations;

(F) Point-of-sale materials (not including packaging);

(G) Sales and marketing presentation kits;

(H) Trade fairs and exhibits;

(I) 50/50 advertising with retailers;

(J) Couponing (printing, distribution, and handling costs only); and

(K) Development and use of web-site on the Internet for advertising and public relations purposes: *Provided*, That Credit-Back shall be limited to \$5,000 per year for such activities, and no credit shall be given for costs for E-commerce (mail ordering through the Internet), Extranet (restricted web sites within the Internet), or portions of a web-site that target the farming or grower trade.

(iii) For any qualified activity involving joint participation by a handler and a manufacturer or seller of a complementary product(s), or a handler selling multiple complementary products, including other nuts, with such activity including the handler's name or brand, or the words "California Almonds", the amount allowed for Credit-Back claim shall reflect that portion of the activity represented by almonds, or the handler's actual payment, whichever is less.

(iv) Except as otherwise provided in paragraph (e)(4)(v) of this section, when products containing almonds are promoted, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less: *Provided*, That, except for mixed nut products, the amount of Credit-Back for qualified promotional activities for products containing almonds shall be granted at 66⅔ percent of proven expenditures, if the product is owned or distributed by the handler and such ownership or distributorship is stated on the package: *Provided Further*, That to receive any level of credit, the product must display the handler's name, the handler's brand, or the words "California Almonds" on the primary, face label.

(v) When products containing almonds are promoted prior to November 2, 1999, the amount allowed for Credit-Back shall reflect that portion of the product weight represented by almonds, or the handler's actual payment, whichever is less.

(5) Credit-Back for promotional activities in a foreign market shall be granted at 66⅔ percent of a handler's unreimbursed expenditures for qualified activities in any foreign market, if

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the handler is promoting pursuant to a contract with the Foreign Agricultural Service, USDA (FAS) and/or the California Department of Food and Agriculture (CDFA). Such activities must also meet the requirements of paragraphs (e)(1), (2), (3), (4), and (6) of this section. Unless the Board is administering the foreign marketing program, such activities shall not be eligible for Credit-Back unless the handler certifies that he/she was not and will not be reimbursed by either FAS or the CDFA for the amount claimed for Credit-Back, and has on record with the Board all claims for reimbursement made to FAS and/or the CDFA. Foreign market expenses paid by third parties as part of a handler's contract with FAS or CDFA will not be eligible for Credit-Back.

(6) A handler must file claims with the Board to obtain Credit-Back for promotional expenditures, as follows:

(i) All claims submitted to the Board for any qualified activity must include:

(A) A description of the activity and when and where it was conducted;

(B) Copies of all invoices from suppliers or agencies;

(C) Copies of all canceled checks issued by the handler in payment of these invoices; and

(D) An actual sample, picture or other physical evidence of the activity.

(ii) Handlers may receive credit against their assessment obligation up to the advertising amount of the assessment installment due: *Provided*, That handlers submit the required documentation for a qualified activity at least 2 weeks prior to the mailing of the Board's first and second assessment notices, and at least 3 weeks prior to the mailing of the Board's third and fourth assessment notices in a crop year: *Provided further*, That promotional activities conducted during the 1998-99 crop year must be conducted and documented at least 2 weeks prior to the mailing of the Board's fourth assessment notice in order to receive credit. In all other instances, handlers must remit the advertising assessment to the Board when billed, and a refund will be issued

to the extent of proven, qualified activities.

(iii) Checks from the Board in payment of approved Credit-Back claims will be mailed to handlers on February 15, April 15, June 15, and 30 days after submission of final claims for the crop year pursuant to paragraph (e)(6)(iv) of this section. To receive payment on these dates, handler claims must be submitted, with all required elements, at least one month prior to the payment date. A handler can receive Credit-Back for his/her allowable direct expenditures only up to the amount of that portion of the handler's assessment designated for marketing promotion, including paid advertising.

(iv) A statement of the Credit-Back commitments outstanding as of the close of a crop year must be submitted in full to the Board within 15 days after the close of that crop year. Final claims pertaining to such commitments outstanding must be submitted within 76 days after the close of that crop year: *Provided*, That for activities conducted during the 1998-99 crop year, final claims pertaining to such commitments outstanding must be submitted within 105 days after the close of the crop year. All other final claims for which no statement of Credit-Back commitments outstanding has been filed must be submitted by August 15 of that calendar year.

(f) *Appeals*. If a determination is made by the Board staff that a particular promotional activity is not eligible for Credit-Back because it does not meet the criteria specified herein, or for any other reason, the affected handler may request the Public Relations and Advertising Committee to review the Board staff's decision. If the affected handler disagrees with the decision of the Public Relations and Advertising Committee, the handler may request that the Board review the Committee decision. If the handler disagrees with the decision of the Board, the handler, through the Board, may request that the Secretary review the Board's decision. Handlers have the right to request anonymity in the review of their appeal. The Secretary

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maintains the right to review any decisions made by the aforementioned bodies at his/her discretion.

[59 FR 35233, July 11, 1994, as amended at 64 FR 41028, July 29, 1999; 64 FR 58766, Nov. 1, 1999]

§ 981.442 Quality control.

(a) *Incoming.* Pursuant to § 981.42(a), the quantity of inedible kernels in each variety of almonds received by a handler, including almonds of his own production, shall be determined and disposed of in accordance with the provisions of this paragraph.

(1) *Sampling.* Each handler shall cause a representative sample of almonds to be drawn from each lot of any variety received. The sample shall be drawn before inedible kernels are removed from the lot, or the lot is processed or stored by the handler. For receipts at premises with mechanical sampling equipment and under contracts providing for payment by the handler to the producer for sound meat content, samples shall be drawn by the handler in a manner acceptable to the Board and the inspection agency. The inspection agency shall make periodic checks of the mechanical sampling procedures. For all other receipts, including but not limited to field examination and purchase receipts, accumulations purchased for cash at the handler's door or from an accumulator, or almonds of the handler's own production, sampling shall be conducted or monitored by the inspection agency in a manner acceptable to the Board. All samples shall be bagged and identified in a manner acceptable to the Board and the inspection agency.

(2) *Variety.* For the purpose of classifying receipts by variety to determine a handler's disposition obligation, "variety" shall mean that variety of almonds which constitutes at least 90 percent of a lot. If no variety constitutes at least 90 percent of the almonds in a lot, the lot shall be designated as "mixed". If the variety which constitutes at least 90 percent of the almonds in the lot is unknown, the lot shall be designated "unknown".

(3) *Analysis of sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the

proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total adjusted kernel weight received by handler, the inedible kernel weight and any other information as the Board may prescribe. The report shall cover the handler's daily receipt or the handler's total receipts during a period not exceeding one month, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* (i) The weight of inedible kernels in excess of 1 percent of kernel weight reported to the Board of any variety received by a handler shall constitute that handler's disposition obligation. For any almonds sold inshell, the weight may be reported to the Board and the disposition obligation for that variety reduced proportionately.

(ii) If a sufficient sample is not available for any lot of almonds, the handler may establish and substantiate, to the satisfaction of the Board, the received weight, the edible and inedible kernel weights, and the adjusted kernel weight by providing sufficient information as the Board may prescribe. If the handler is only able to establish and substantiate the approximate received weight, an inedible disposition obligation of 10 percent of such received weight may be applied, upon agreement between the Board and the handler.

(5) *Meeting the disposition obligation.* Each handler shall meet its disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes on record with the Board as accepted users. Handlers shall notify the Board at least 72 hours prior to delivery: *Provided*, That the Board or its employees may lessen this notification time whenever it determines that the 72 hour requirement is impracticable. The Board may supervise deliveries at its option. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to